

REMARKS

Claims 1, 3 and 6-21 are pending. Claims 1, 3 and 6-21 are rejected.

Claim 19 is amended. Claims 15-17 are cancelled. Claim 22 is added.

35 U.S.C. §112

Claims 19 and 21 are rejected by the Examiner under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner rejects the term “the intersection” in claim 19 and rejects the phrase “or any other structural material” in claim 19. With respect to the above rejections, Applicant respectfully submits the following remarks.

In claim 19, the term “the intersection” has been amended to read “the connection”. Applicant respectfully submits that the term “the connection” is supported by claim 1 because in claim 1 the phrase “a support flange portion connected to said joist-fastening flange portion” is used.

In claim 21, the Examiner has rejected the term “any other structural material” because in the Examiner’s opinion, this term is viewed as indefinite.

Applicant respectfully submits that this term is not indefinite for the following reasons. Applicant has exemplified preferred structural materials for the formation of the deck mounting brackets of the invention. These examples of preferred structural material, which are recited as

steel, aluminum, and plastic, are found at page 4 of the instant specification. Applicant has also provided in great detail the construction details of the deck mounting bracket as well as the relationship of various components to one another that comprises the deck mounting bracket. Accordingly, Applicant respectfully submits that given the above level of information, one skilled in the art would have no problem in determining what "other structural material" will be suitable to construct the deck mounting bracket.

35 U.S.C. §102

Claims 1, 3, 6-9, 11, 13-14, and 20-21 are rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,641,474 to Cannarsa.

With respect to the rejection under 35 U.S.C. §102(b), as being anticipated by Cannarsa, this rejection is respectfully traversed for the reasons that follow.

Cannarsa discloses a wallboard fastener that is useful in securing a section or piece of wallboard that is inserted in an opening of the wall or wallboard. The wallboard fastener, as disclosed by Cannarsa, comprises a pair of flat segments or surfaces that are located in a common plane and are joined by a V-shaped section made-up of a pair of legs.

Additionally, the free edges of both flat segments of the wallboard fastener are provided with a row of teeth. Similarly, the legs that make-up the V-section of the fastener are also provided with a row of teeth. During engagement of the fastener into the wallboard, the legs that comprise the V-section of the fastener compress and the teeth, which are located on the legs, are pushed into

the wall while the teeth located on the flat surfaces of the fastener engage the side surface of the wall thereby firmly securing the fastener into the wall.

Applicant's invention is for a mounting bracket that is used to secure at least one plank to at least one joist to form a deck surface.

Applicant's mounting bracket has a separating flange, a joist-fastening portion, a support flange, and a plank-fastening flange. Also, the mounting bracket includes at least one joist-fastening hole located in the joist-fastening portion. Similarly, the mounting bracket includes at least one plank-fastening hole located in the plank-fastening flange of the mounting bracket. Further, the support flange of the mounting bracket includes one or more access holes aligned with each joist-fastening hole to provide access through the support flange to each joist-fastening hole. Applicant's mounting bracket is affixed to the side surface of a joist using a first fastener. The mounting bracket is affixed to the bottom surface of the plank using a second fastener.

Applicant respectfully wishes to point out to the Examiner an important distinction between the disclosure of Cannarsa and Applicant's invention. The distinction resides in the way the fastener of Cannarsa and Applicant's mounting bracket are secured to their respective surfaces. In Cannarsa, the fastener is secured to the surface (wallboard) by a series of teeth. In Applicant's mounting bracket, the bracket is secured to the joist by the use of a fastener which is placed in the joist fastening hole located in the joist-fastening portion. Similarly, the bracket is secured to the plank by the use of a fastener that is placed in the plank-fastening hole located in the plank-fastening portion.

Applicant also wishes to point out to the Examiner that all of the claims, which are the subject of this rejection, provide for a joist-fastening flange portion having a hole therein for receiving a fastener for fastening the mounting bracket and a plank-fastening flange portion having a hole therein for receiving a fastener for fastening the mounting bracket. Cannarsa fails to disclose these features of Applicant's mounting bracket.

Under 35 U.S.C. §102, anticipation requires that a single prior art reference discloses each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the prior art are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

Since Cannarsa fails to disclose Applicant's joist-fastening hole element and plank-fastening hole element, which are defined in Applicant's invention, the rejection thereto has been overcome and should be withdrawn.

Claims 15-17 are rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,965,980 to Leavens.

In view of Applicant's cancellation of claims 15-17, this rejection is now moot.

Claims 3, 6-7 and 18-21 depend from independent claim 1 and claims 9-14 depend from independent claim 8. These claims are further believed allowable over the references of record for

Application No. 10/712,121
Amdt. dated January 4, 2005
Reply to Office Action of October 5, 2004

the same reasons set forth above with respect to their parent claims since each sets forth additional novel components of Applicant's novel mounting bracket and mounting bracket assembly.

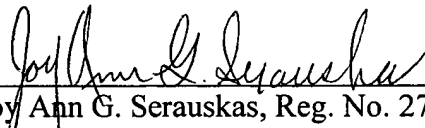
New Claim

Applicant has added new claim 22 which is directed to a method of securing a plank to a joist. Support for new claim 22 is found at page 6, lines 12 to 16 and page 7, lines 17 to 21 of the instant specification.

CONCLUSION

In view of the foregoing remarks and amendments, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicant urges the Examiner to telephone Applicant's agent so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,


Joy Ann G. Serauskas, Reg. No. 27,952

Date: January 4, 2004

MCDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, Illinois 60606-5096
tel. no.: 312.372.2000
fax. no. 312.984.7700